

1 **“PART C—INFANTS AND**
2 **TODDLERS WITH DISABILITIES**

3 **“SEC. 631. FINDINGS AND POLICY.**

4 “(a) FINDINGS.—Congress finds that there is an ur-
5 gent and substantial need—

6 “(1) to enhance the development of infants and
7 toddlers with disabilities, to minimize their potential
8 for developmental delay, and to recognize the signifi-
9 cant brain development which occurs during a child’s
10 first 3 years of life;

11 “(2) to reduce the educational costs to our soci-
12 ety, including our Nation’s schools, by minimizing
13 the need for special education and related services
14 after infants and toddlers with disabilities reach
15 school age;

16 “(3) to maximize the potential for individuals
17 with disabilities to live independently in society;

18 “(4) to enhance the capacity of families to meet
19 the special needs of their infants and toddlers with
20 disabilities; and

21 “(5) to enhance the capacity of State and local
22 agencies and service providers to identify, evaluate,
23 and meet the needs of all children, particularly mi-
24 nority, low-income, inner city, and rural children.

1 “(b) POLICY.—It is the policy of the United States
2 to provide financial assistance to States—

3 “(1) to develop and implement a statewide,
4 comprehensive, coordinated, multidisciplinary, inter-
5 agency system that provides early intervention serv-
6 ices for infants and toddlers with disabilities and
7 their families;

8 “(2) to facilitate the coordination of payment
9 for early intervention services from Federal, State,
10 local, and private sources (including public and pri-
11 vate insurance coverage);

12 “(3) to enhance State capacity to provide high
13 quality early intervention services and expand and
14 improve existing early intervention services being
15 provided to infants and toddlers with disabilities and
16 their families; and

17 “(4) to encourage States to expand opportuni-
18 ties for children under 3 years of age who would be
19 at risk of having substantial developmental delay if
20 they did not receive early intervention services.

21 **“SEC. 632. DEFINITIONS.**

22 “As used in this part:

23 “(1) AT-RISK INFANT OR TODDLER.—The term
24 ‘at-risk infant or toddler’ means an individual under
25 3 years of age who would be at risk of experiencing

1 a substantial developmental delay if early interven-
2 tion services were not provided to the individual.

3 “(2) COUNCIL.—The term ‘council’ means a
4 State interagency coordinating council established
5 under section 641.

6 “(3) DEVELOPMENTAL DELAY.—The term ‘de-
7 velopmental delay’, when used with respect to an in-
8 dividual residing in a State, has the meaning given
9 such term by the State under section 635(a)(1).

10 “(4) EARLY INTERVENTION SERVICES.—The
11 term ‘early intervention services’ means develop-
12 mental services that—

13 “(A) are provided under public supervision;

14 “(B) are provided at no cost except where
15 Federal or State law provides for a system of
16 payments by families, including a schedule of
17 sliding fees;

18 “(C) are designed to meet the develop-
19 mental needs of an infant or toddler with a dis-
20 ability in any 1 or more of the following areas:

21 “(i) physical development;

22 “(ii) cognitive development;

23 “(iii) communication development;

24 “(iv) social or emotional development;

25 or

- 1 “(v) adaptive development;
- 2 “(D) meet the standards of the State in
- 3 which the services are provided, including the
- 4 requirements of this part;
- 5 “(E) include—
- 6 “(i) family training, counseling, and
- 7 home visits;
- 8 “(ii) special instruction;
- 9 “(iii) speech-language pathology and
- 10 audiology services, and sign language serv-
- 11 ices;
- 12 “(iv) occupational therapy;
- 13 “(v) physical therapy;
- 14 “(vi) psychological services;
- 15 “(vii) service coordination services;
- 16 “(viii) medical services only for diag-
- 17 nostic or evaluation purposes;
- 18 “(ix) early identification, screening,
- 19 and assessment services;
- 20 “(x) health services necessary to en-
- 21 able the infant or toddler to benefit from
- 22 the other early intervention services;
- 23 “(xi) social work services;
- 24 “(xii) vision services;

1 “(xiii) assistive technology devices and
2 assistive technology services; and

3 “(xiv) transportation and related costs
4 that are necessary to enable an infant or
5 toddler and the infant’s or toddler’s family
6 to receive another service described in this
7 paragraph;

8 “(F) are provided by qualified personnel,
9 including—

10 “(i) special educators;

11 “(ii) speech-language pathologists and
12 audiologists;

13 “(iii) occupational therapists;

14 “(iv) physical therapists;

15 “(v) psychologists;

16 “(vi) social workers;

17 “(vii) nurses;

18 “(viii) nutritionists;

19 “(ix) family therapists;

20 “(x) orientation and mobility special-
21 ists; and

22 “(xi) pediatricians and other physi-
23 cians;

24 “(G) to the maximum extent appropriate,
25 are provided in natural environments, including

1 the home, and community settings in which
2 children without disabilities participate; and

3 “(H) are provided in conformity with an
4 individualized family service plan adopted in ac-
5 cordance with section 636.

6 “(5) INFANT OR TODDLER WITH A DIS-
7 ABILITY.—The term ‘infant or toddler with a
8 disability’—

9 “(A) means an individual under 3 years of
10 age who needs early intervention services be-
11 cause the individual—

12 “(i) is experiencing developmental
13 delays, as measured by appropriate diag-
14 nostic instruments and procedures in 1 or
15 more of the areas of cognitive development,
16 physical development, communication de-
17 velopment, social or emotional develop-
18 ment, and adaptive development; or

19 “(ii) has a diagnosed physical or men-
20 tal condition which has a high probability
21 of resulting in developmental delay; and

22 “(B) may also include, at a State’s
23 discretion—

24 “(i) at-risk infants and toddlers; and

1 “(ii) children with disabilities who are
2 eligible for services under section 619 and
3 who previously received services under this
4 part until such children enter, or are eligi-
5 ble under State law to enter, kindergarten.

6 **“SEC. 633. GENERAL AUTHORITY.**

7 “The Secretary shall, in accordance with this part,
8 make grants to States (from their allotments under sec-
9 tion 643) to assist each State to maintain and implement
10 a statewide, comprehensive, coordinated, multidisciplinary,
11 interagency system to provide early intervention services
12 for infants and toddlers with disabilities and their families.

13 **“SEC. 634. ELIGIBILITY.**

14 “In order to be eligible for a grant under section 633,
15 a State shall demonstrate to the Secretary that the
16 State—

17 “(1) has adopted a policy that appropriate early
18 intervention services are available to all infants and
19 toddlers with disabilities in the State and their fami-
20 lies, including Indian infants and toddlers with dis-
21 abilities and their families residing on a reservation
22 geographically located in the State; and

23 “(2) has in effect a statewide system that meets
24 the requirements of section 635.

1 **“SEC. 635. REQUIREMENTS FOR STATEWIDE SYSTEM.**

2 “(a) IN GENERAL.—A statewide system described in
3 section 633 shall include, at a minimum, the following
4 components:

5 “(1) A definition of the term ‘developmental
6 delay’ that—

7 “(A) will be used by the State in carrying
8 out programs under this part; and

9 “(B) covers, at a minimum, all infants and
10 toddlers with—

11 “(i) a developmental delay of 35 per-
12 cent or more in 1 of the developmental
13 areas described in section 632(5)(A)(i); or

14 “(ii) a developmental delay of 25 per-
15 cent or more in 2 or more of the develop-
16 mental areas described in section
17 632(5)(A)(i).

18 “(2) A State policy that is in effect and that
19 ensures that appropriate early intervention services
20 are available to all infants and toddlers with disabil-
21 ities and their families, including Indian infants and
22 toddlers and their families residing on a reservation
23 geographically located in the State.

24 “(3) A timely, comprehensive, multidisciplinary
25 evaluation of the functioning of each infant or tod-
26 dler with a disability in the State, and a family-di-

1 rected identification of the needs of each family of
2 such an infant or toddler, to appropriately assist in
3 the development of the infant or toddler.

4 “(4) For each infant or toddler with a disability
5 in the State, an individualized family service plan in
6 accordance with section 636, including service co-
7 ordination services in accordance with such service
8 plan.

9 “(5) A comprehensive child find system, con-
10 sistent with part B, including a system for making
11 referrals to service providers that includes timelines
12 and provides for participation by primary referral
13 sources.

14 “(6) A public awareness program focusing on
15 early identification of infants and toddlers with dis-
16 abilities, including the preparation and dissemination
17 by the lead agency designated or established under
18 paragraph (10) to all primary referral sources, espe-
19 cially hospitals and physicians, of information for
20 parents on the availability of early intervention serv-
21 ices, and procedures for determining the extent to
22 which such sources disseminate such information to
23 parents of infants and toddlers.

24 “(7) A central directory that includes informa-
25 tion on early intervention services, resources, and ex-

1 perts available in the State and research and dem-
2 onstration projects being conducted in the State.

3 “(8) A comprehensive system of personnel de-
4 velopment, including the training of paraprofes-
5 sionals and the training of primary referral sources
6 with respect to the basic components of early inter-
7 vention services available in the State, which com-
8 prehensive system may include—

9 “(A) implementing innovative strategies
10 and activities for the recruitment and retention
11 of early education service providers;

12 “(B) promoting the preparation of early
13 intervention providers who are fully and appro-
14 priately qualified to provide early intervention
15 services under this part;

16 “(C) training personnel to work in rural
17 and inner-city areas; and

18 “(D) training personnel to coordinate tran-
19 sition services for infants and toddlers served
20 under this part from an early intervention pro-
21 gram under this part to preschool or other ap-
22 propriate services.

23 “(9) Subject to subsection (b), policies and pro-
24 cedures relating to the establishment and mainte-
25 nance of standards to ensure that personnel nec-

1 essary to carry out this part are appropriately and
2 adequately prepared and trained, including the es-
3 tablishment and maintenance of standards which are
4 consistent with any State-approved or recognized
5 certification, licensing, registration, or other com-
6 parable requirements which apply to the area in
7 which such personnel are providing early interven-
8 tion services, except that nothing in this part (in-
9 cluding this paragraph) shall be construed to pro-
10 hibit the use of paraprofessionals and assistants who
11 are appropriately trained in accordance with State
12 law, regulation, or written policy, to assist in the
13 provision of early intervention services under this
14 part to infants and toddlers with disabilities.

15 “(10) A single line of responsibility in a lead
16 agency designated or established by the Governor for
17 carrying out—

18 “(A) the general administration and super-
19 vision of programs and activities receiving as-
20 sistance under section 633, and the monitoring
21 of programs and activities used by the State to
22 carry out this part, whether or not such pro-
23 grams or activities are receiving assistance
24 made available under section 633, to ensure
25 that the State complies with this part;

1 “(B) the identification and coordination of
2 all available resources within the State from
3 Federal, State, local, and private sources;

4 “(C) the assignment of financial responsi-
5 bility in accordance with section 637(a)(2) to
6 the appropriate agencies;

7 “(D) the development of procedures to en-
8 sure that services are provided to infants and
9 toddlers with disabilities and their families
10 under this part in a timely manner pending the
11 resolution of any disputes among public agen-
12 cies or service providers;

13 “(E) the resolution of intra- and inter-
14 agency disputes; and

15 “(F) the entry into formal interagency
16 agreements that define the financial responsi-
17 bility of each agency for paying for early inter-
18 vention services (consistent with State law) and
19 procedures for resolving disputes and that in-
20 clude all additional components necessary to en-
21 sure meaningful cooperation and coordination.

22 “(11) A policy pertaining to the contracting or
23 making of other arrangements with service providers
24 to provide early intervention services in the State,
25 consistent with the provisions of this part, including

1 the contents of the application used and the condi-
2 tions of the contract or other arrangements.

3 “(12) A procedure for securing timely reim-
4 bursements of funds used under this part in accord-
5 ance with section 640(a).

6 “(13) Procedural safeguards with respect to
7 programs under this part, as required by section
8 639.

9 “(14) A system for compiling data requested by
10 the Secretary under section 618 that relates to this
11 part.

12 “(15) A State interagency coordinating council
13 that meets the requirements of section 641.

14 “(16) Policies and procedures to ensure that,
15 consistent with section 636(d)(5) to the maximum
16 extent appropriate, early intervention services are
17 provided in natural environments unless a specific
18 outcome cannot be met satisfactorily for the infant
19 or toddler in a natural environment.

20 “(b) POLICY.—In implementing subsection (a)(9), a
21 State may adopt a policy that includes making ongoing
22 good-faith efforts to recruit and hire appropriately and
23 adequately trained personnel to provide early intervention
24 services to infants and toddlers with disabilities, including,
25 in a geographic area of the State where there is a shortage

1 of such personnel, the most qualified individuals available
2 who are making satisfactory progress toward completing
3 applicable coursework necessary to meet the standards de-
4 scribed in subsection (a)(9), consistent with State law
5 within 3 years.

6 “(c) FLEXIBILITY TO SERVE CHILDREN 3 YEARS OF
7 AGE TO UNDER 6 YEARS OF AGE.—

8 “(1) IN GENERAL.—A statewide system de-
9 scribed in section 633 may include a State policy,
10 developed and implemented jointly by the lead agen-
11 cy and the State educational agency, under which
12 parents of children with disabilities who are eligible
13 for services under section 619 may choose the con-
14 tinuation of early intervention services (which shall
15 include an educational component that promotes
16 school readiness and incorporates pre-literacy, lan-
17 guage, and numeracy skills) for such children under
18 this part until such children enter, or are eligible
19 under State law to enter, kindergarten.

20 “(2) REQUIREMENTS.—If a statewide system
21 includes a State policy described in paragraph (1),
22 the statewide system shall ensure—

23 “(A) that parents of infants or toddlers
24 with disabilities (as defined in section
25 632(5)(A)) provide informed written consent to

1 the State, before such infants and toddlers
2 reach 3 years of age, as to whether such par-
3 ents intend to choose the continuation of early
4 intervention services pursuant to this subsection
5 for such infants or toddlers;

6 “(B) that the State policy will not affect
7 the right of any child served pursuant to this
8 subsection to instead receive a free appropriate
9 public education under part B;

10 “(C) that parents of children served pursu-
11 ant to this subsection are provided with annual
12 notice—

13 “(i) of such parents’ right to elect
14 services pursuant to this subsection or
15 under part B; and

16 “(ii) fully explaining the differences
17 between receiving services pursuant to this
18 subsection and receiving services under
19 part B, including—

20 “(I) the types of services avail-
21 able under both provisions;

22 “(II) applicable procedural safe-
23 guards under both provisions, includ-
24 ing due-process protections and medi-

1 ation or other dispute resolution op-
2 tions; and

3 “(III) the possible costs, if any
4 (including insurance and family cost
5 share) to parents under both provi-
6 sions;

7 “(D) that the conference under section
8 637(a)(9)(A)(ii)(II), the review under section
9 637(a)(9)(B), and the establishment of a tran-
10 sition plan under section 637(a)(9)(C) occur
11 not less than 90 days (and at the discretion of
12 the parties to the conference, not more than 9
13 months) prior to the time the child is scheduled
14 to begin receiving services under part B, includ-
15 ing under section 619;

16 “(E) the continuance of all early interven-
17 tion services outlined in the child’s individual-
18 ized family service plan under section 636 while
19 any eligibility determination is being made for
20 services under this subsection; and

21 “(F) that services provided pursuant to
22 this subsection include an educational compo-
23 nent that promotes school readiness and incor-
24 porates pre-literacy, language, and numeracy
25 skills and are provided in accordance with an

1 individualized family service plan under section
2 636.

3 “(3) REPORTING REQUIREMENT.—If a state-
4 wide system includes a State policy described in
5 paragraph (1), the State shall submit to the Sec-
6 retary, in the State’s report under section
7 637(b)(4)(A), a report on—

8 “(A) the percentage of children with dis-
9 abilities who are eligible for services under sec-
10 tion 619 but whose parents choose for such
11 children to continue to receive early intervention
12 services under this part; and

13 “(B) the number of children who are eligi-
14 ble for services under section 619 who instead
15 continue to receive early intervention services
16 under this part.

17 “(4) RULE OF CONSTRUCTION.—Nothing in
18 this subsection shall be construed to require a pro-
19 vider of services under this part to provide a child
20 served under this part with a free appropriate public
21 education.

22 **“SEC. 636. INDIVIDUALIZED FAMILY SERVICE PLAN.**

23 “(a) ASSESSMENT AND PROGRAM DEVELOPMENT.—
24 A statewide system described in section 633 shall provide,

1 at a minimum, for each infant or toddler with a disability,
2 and the infant's or toddler's family, to receive—

3 “(1) a multidisciplinary assessment of the
4 unique strengths and needs of the infant or toddler
5 and the identification of services appropriate to meet
6 such needs;

7 “(2) a family-directed assessment of the re-
8 sources, priorities, and concerns of the family and
9 the identification of the supports and services nec-
10 essary to enhance the family's capacity to meet the
11 developmental needs of the infant or toddler; and

12 “(3) a written individualized family service plan
13 developed by a multidisciplinary team, including the
14 parents, as required by subsection (e), including a
15 description of the appropriate transition services for
16 the child.

17 “(b) PERIODIC REVIEW.—The individualized family
18 service plan shall be evaluated once a year and the family
19 shall be provided a review of the plan at 6-month intervals
20 (or more often where appropriate based on infant or tod-
21 dler and family needs).

22 “(c) PROMPTNESS AFTER ASSESSMENT.—The indi-
23 vidualized family service plan shall be developed within a
24 reasonable time after the assessment required by sub-
25 section (a)(1) is completed. With the parents' consent,

1 early intervention services may commence prior to the
2 completion of the assessment.

3 “(d) CONTENT OF PLAN.—The individualized family
4 service plan shall be in writing and contain—

5 “(1) a statement of the infant’s or toddler’s
6 present levels of physical development, cognitive de-
7 velopment, communication development, social or
8 emotional development, and adaptive development,
9 based on objective criteria;

10 “(2) a statement of the family’s resources, pri-
11 orities, and concerns relating to enhancing the devel-
12 opment of the family’s infant or toddler with a dis-
13 ability;

14 “(3) a statement of the major outcomes ex-
15 pected to be achieved for the infant or toddler and
16 the family, including, as appropriate, pre-literacy
17 and language skills, and the criteria, procedures,
18 and timelines used to determine the degree to which
19 progress toward achieving the outcomes is being
20 made and whether modifications or revisions of the
21 outcomes or services are necessary;

22 “(4) a statement of specific early intervention
23 services necessary to meet the unique needs of the
24 infant or toddler and the family, including the fre-
25 quency, intensity, and method of delivering services;

1 “(5) a statement of the natural environments in
2 which early intervention services will appropriately
3 be provided, including a justification of the extent,
4 if any, to which the services will not be provided in
5 a natural environment;

6 “(6) the projected dates for initiation of serv-
7 ices and the anticipated length, duration, and fre-
8 quency of the services;

9 “(7) the identification of the service coordinator
10 from the profession most immediately relevant to the
11 infant’s or toddler’s or family’s needs (or who is oth-
12 erwise qualified to carry out all applicable respon-
13 sibilities under this part) who will be responsible for
14 the implementation of the plan and coordination
15 with other agencies and persons, including transition
16 services; and

17 “(8) the steps to be taken to support the transi-
18 tion of the toddler with a disability to preschool or
19 other appropriate services.

20 “(e) PARENTAL CONSENT.—The contents of the indi-
21 vidualized family service plan shall be fully explained to
22 the parents and informed written consent from the par-
23 ents shall be obtained prior to the provision of early inter-
24 vention services described in such plan. If the parents do
25 not provide consent with respect to a particular early

1 intervention service, then only the early intervention serv-
2 ices to which consent is obtained shall be provided.

3 **“SEC. 637. STATE APPLICATION AND ASSURANCES.**

4 “(a) APPLICATION.—A State desiring to receive a
5 grant under section 633 shall submit an application to the
6 Secretary at such time and in such manner as the Sec-
7 retary may reasonably require. The application shall
8 contain—

9 “(1) a designation of the lead agency in the
10 State that will be responsible for the administration
11 of funds provided under section 633;

12 “(2) a designation of an individual or entity re-
13 sponsible for assigning financial responsibility
14 among appropriate agencies;

15 “(3) information demonstrating eligibility of the
16 State under section 634, including—

17 “(A) information demonstrating to the
18 Secretary’s satisfaction that the State has in ef-
19 fect the statewide system required by section
20 633; and

21 “(B) a description of services to be pro-
22 vided to infants and toddlers with disabilities
23 and their families through the system;

1 “(4) if the State provides services to at-risk in-
2 fants and toddlers through the system, a description
3 of such services;

4 “(5) a description of the uses for which funds
5 will be expended in accordance with this part;

6 “(6) a description of the State policies and pro-
7 cedures that require the referral for early interven-
8 tion services of a child under the age of 3 who—

9 “(A) is involved in a substantiated case of
10 child abuse or neglect; or

11 “(B) is identified as affected by illegal sub-
12 stance abuse, or withdrawal symptoms resulting
13 from prenatal drug exposure;

14 “(7) a description of the procedure used to en-
15 sure that resources are made available under this
16 part for all geographic areas within the State;

17 “(8) a description of State policies and proce-
18 dures that ensure that, prior to the adoption by the
19 State of any other policy or procedure necessary to
20 meet the requirements of this part, there are public
21 hearings, adequate notice of the hearings, and an
22 opportunity for comment available to the general
23 public, including individuals with disabilities and
24 parents of infants and toddlers with disabilities;

1 all such parties, not more than 9
2 months) before the child is eligible for
3 the preschool services, to discuss any
4 such services that the child may re-
5 ceive; and

6 “(III) in the case of a child who
7 may not be eligible for such preschool
8 services, with the approval of the fam-
9 ily, make reasonable efforts to con-
10 vene a conference among the lead
11 agency, the family, and providers of
12 other appropriate services for children
13 who are not eligible for preschool serv-
14 ices under part B, to discuss the ap-
15 propriate services that the child may
16 receive;

17 “(B) to review the child’s program options
18 for the period from the child’s third birthday
19 through the remainder of the school year; and

20 “(C) to establish a transition plan, includ-
21 ing, as appropriate, steps to exit from the pro-
22 gram; and

23 “(10) such other information and assurances as
24 the Secretary may reasonably require.

1 “(b) ASSURANCES.—The application described in
2 subsection (a)—

3 “(1) shall provide satisfactory assurance that
4 Federal funds made available under section 643 to
5 the State will be expended in accordance with this
6 part;

7 “(2) shall contain an assurance that the State
8 will comply with the requirements of section 640;

9 “(3) shall provide satisfactory assurance that
10 the control of funds provided under section 643, and
11 title to property derived from those funds, will be in
12 a public agency for the uses and purposes provided
13 in this part and that a public agency will administer
14 such funds and property;

15 “(4) shall provide for—

16 “(A) making such reports in such form
17 and containing such information as the Sec-
18 retary may require to carry out the Secretary’s
19 functions under this part; and

20 “(B) keeping such reports and affording
21 such access to the reports as the Secretary may
22 find necessary to ensure the correctness and
23 verification of the reports and proper disburse-
24 ment of Federal funds under this part;

1 “(5) provide satisfactory assurance that Federal
2 funds made available under section 643 to the
3 State—

4 “(A) will not be commingled with State
5 funds; and

6 “(B) will be used so as to supplement the
7 level of State and local funds expended for in-
8 fants and toddlers with disabilities and their
9 families and in no case to supplant those State
10 and local funds;

11 “(6) shall provide satisfactory assurance that
12 such fiscal control and fund accounting procedures
13 will be adopted as may be necessary to ensure prop-
14 er disbursement of, and accounting for, Federal
15 funds paid under section 643 to the State;

16 “(7) shall provide satisfactory assurance that
17 policies and procedures have been adopted to ensure
18 meaningful involvement of underserved groups, in-
19 cluding minority, low-income, and rural families, in
20 the planning and implementation of all the require-
21 ments of this part; and

22 “(8) shall contain such other information and
23 assurances as the Secretary may reasonably require
24 by regulation.

1 “(c) STANDARD FOR DISAPPROVAL OF APPLICA-
2 TION.—The Secretary may not disapprove such an appli-
3 cation unless the Secretary determines, after notice and
4 opportunity for a hearing, that the application fails to
5 comply with the requirements of this section.

6 “(d) SUBSEQUENT STATE APPLICATION.—If a State
7 has on file with the Secretary a policy, procedure, or as-
8 surance that demonstrates that the State meets a require-
9 ment of this section, including any policy or procedure
10 filed under part C, as in effect before the date of enact-
11 ment of the Individuals with Disabilities Education Im-
12 provement Act of 2003, the Secretary shall consider the
13 State to have met the requirement for purposes of receiv-
14 ing a grant under this part.

15 “(e) MODIFICATION OF APPLICATION.—An applica-
16 tion submitted by a State in accordance with this section
17 shall remain in effect until the State submits to the Sec-
18 retary such modifications as the State determines nec-
19 essary. This section shall apply to a modification of an
20 application to the same extent and in the same manner
21 as this section applies to the original application.

22 “(f) MODIFICATIONS REQUIRED BY THE SEC-
23 RETARY.—The Secretary may require a State to modify
24 its application under this section, but only to the extent

1 necessary to ensure the State's compliance with this part,
2 if—

3 “(1) an amendment is made to this Act, or a
4 Federal regulation issued under this Act;

5 “(2) a new interpretation of this Act is made by
6 a Federal court or the State's highest court; or

7 “(3) an official finding of noncompliance with
8 Federal law or regulations is made with respect to
9 the State.

10 **“SEC. 638. USES OF FUNDS.**

11 “In addition to using funds provided under section
12 633 to maintain and implement the statewide system re-
13 quired by such section, a State may use such funds—

14 “(1) for direct early intervention services for in-
15 fants and toddlers with disabilities, and their fami-
16 lies, under this part that are not otherwise funded
17 through other public or private sources;

18 “(2) to expand and improve on services for in-
19 fants and toddlers and their families under this part
20 that are otherwise available;

21 “(3) to provide a free appropriate public edu-
22 cation, in accordance with part B, to children with
23 disabilities from their third birthday to the begin-
24 ning of the following school year; and

1 “(4) in any State that does not provide services
2 for at-risk infants and toddlers under section
3 637(a)(4), to strengthen the statewide system by ini-
4 tiating, expanding, or improving collaborative efforts
5 related to at-risk infants and toddlers, including es-
6 tablishing linkages with appropriate public or private
7 community-based organizations, services, and per-
8 sonnel for the purposes of—

9 “(A) identifying and evaluating at-risk in-
10 fants and toddlers;

11 “(B) making referrals of the infants and
12 toddlers identified and evaluated under sub-
13 paragraph (A); and

14 “(C) conducting periodic follow-up on each
15 such referral to determine if the status of the
16 infant or toddler involved has changed with re-
17 spect to the eligibility of the infant or toddler
18 for services under this part.

19 **“SEC. 639. PROCEDURAL SAFEGUARDS.**

20 “(a) MINIMUM PROCEDURES.—The procedural safe-
21 guards required to be included in a statewide system
22 under section 635(a)(13) shall provide, at a minimum, the
23 following:

24 “(1) The timely administrative resolution of
25 complaints by parents. Any party aggrieved by the

1 findings and decision regarding an administrative
2 complaint shall have the right to bring a civil action
3 with respect to the complaint in any State court of
4 competent jurisdiction or in a district court of the
5 United States without regard to the amount in con-
6 troversy. In any action brought under this para-
7 graph, the court shall receive the records of the ad-
8 ministrative proceedings, shall hear additional evi-
9 dence at the request of a party, and, basing its deci-
10 sion on the preponderance of the evidence, shall
11 grant such relief as the court determines is appro-
12 priate.

13 “(2) The right to confidentiality of personally
14 identifiable information, including the right of par-
15 ents to written notice of and written consent to the
16 exchange of such information among agencies con-
17 sistent with Federal and State law.

18 “(3) The right of the parents to determine
19 whether they, their infant or toddler, or other family
20 members will accept or decline any early intervention
21 service under this part in accordance with State law
22 without jeopardizing other early intervention services
23 under this part.

24 “(4) The opportunity for parents to examine
25 records relating to assessment, screening, eligibility

1 determinations, and the development and implemen-
2 tation of the individualized family service plan.

3 “(5) Procedures to protect the rights of the in-
4 fant or toddler whenever the parents of the infant or
5 toddler are not known or cannot be found or the in-
6 fant or toddler is a ward of the State, including the
7 assignment of an individual (who shall not be an em-
8 ployee of the State lead agency, or other State agen-
9 cy, and who shall not be any person, or any em-
10 ployee of a person, providing early intervention serv-
11 ices to the infant or toddler or any family member
12 of the infant or toddler) to act as a surrogate for the
13 parents.

14 “(6) Written prior notice to the parents of the
15 infant or toddler with a disability whenever the State
16 agency or service provider proposes to initiate or
17 change, or refuses to initiate or change, the identi-
18 fication, evaluation, or placement of the infant or
19 toddler with a disability, or the provision of appro-
20 priate early intervention services to the infant or
21 toddler.

22 “(7) Procedures designed to ensure that the no-
23 tice required by paragraph (6) fully informs the par-
24 ents, in the parents’ native language, unless it clear-

1 ly is not feasible to do so, of all procedures available
2 pursuant to this section.

3 “(8) The right of parents to use mediation in
4 accordance with section 615, except that—

5 “(A) any reference in the section to a
6 State educational agency shall be considered to
7 be a reference to a State’s lead agency estab-
8 lished or designated under section 635(a)(10);

9 “(B) any reference in the section to a local
10 educational agency shall be considered to be a
11 reference to a local service provider or the
12 State’s lead agency under this part, as the case
13 may be; and

14 “(C) any reference in the section to the
15 provision of free appropriate public education to
16 children with disabilities shall be considered to
17 be a reference to the provision of appropriate
18 early intervention services to infants and tod-
19 dlers with disabilities.

20 “(b) SERVICES DURING PENDENCY OF PRO-
21 CEEDINGS.—During the pendency of any proceeding or ac-
22 tion involving a complaint by the parents of an infant or
23 toddler with a disability, unless the State agency and the
24 parents otherwise agree, the infant or toddler shall con-
25 tinue to receive the appropriate early intervention services

1 currently being provided or, if applying for initial services,
2 shall receive the services not in dispute.

3 **“SEC. 640. PAYOR OF LAST RESORT.**

4 “(a) NONSUBSTITUTION.—Funds provided under
5 section 643 may not be used to satisfy a financial commit-
6 ment for services that would have been paid for from an-
7 other public or private source, including any medical pro-
8 gram administered by the Secretary of Defense, but for
9 the enactment of this part, except that whenever consid-
10 ered necessary to prevent a delay in the receipt of appro-
11 priate early intervention services by an infant, toddler, or
12 family in a timely fashion, funds provided under section
13 643 may be used to pay the provider of services pending
14 reimbursement from the agency that has ultimate respon-
15 sibility for the payment.

16 “(b) REDUCTION OF OTHER BENEFITS.—Nothing in
17 this part shall be construed to permit the State to reduce
18 medical or other assistance available or to alter eligibility
19 under title V of the Social Security Act (relating to mater-
20 nal and child health) or title XIX of the Social Security
21 Act (relating to Medicaid for infants or toddlers with dis-
22 abilities) within the State.

23 **“SEC. 641. STATE INTERAGENCY COORDINATING COUNCIL.**

24 “(a) ESTABLISHMENT.—

1 “(1) IN GENERAL.—A State that desires to re-
2 ceive financial assistance under this part shall estab-
3 lish a State interagency coordinating council.

4 “(2) APPOINTMENT.—The council shall be ap-
5 pointed by the Governor. In making appointments to
6 the council, the Governor shall ensure that the mem-
7 bership of the council reasonably represents the pop-
8 ulation of the State.

9 “(3) CHAIRPERSON.—The Governor shall des-
10 ignate a member of the council to serve as the chair-
11 person of the council, or shall require the council to
12 so designate such a member. Any member of the
13 council who is a representative of the lead agency
14 designated under section 635(a)(10) may not serve
15 as the chairperson of the council.

16 “(b) COMPOSITION.—

17 “(1) IN GENERAL.—The council shall be com-
18 posed as follows:

19 “(A) PARENTS.—At least 20 percent of
20 the members shall be parents of infants or tod-
21 dlers with disabilities or children with disabil-
22 ities aged 12 or younger, with knowledge of, or
23 experience with, programs for infants and tod-
24 dlers with disabilities. At least 1 such member
25 shall be a parent of an infant or toddler with

1 a disability or a child with a disability aged 6
2 or younger.

3 “(B) SERVICE PROVIDERS.—At least 20
4 percent of the members shall be public or pri-
5 vate providers of early intervention services.

6 “(C) STATE LEGISLATURE.—At least 1
7 member shall be from the State legislature.

8 “(D) PERSONNEL PREPARATION.—At least
9 1 member shall be involved in personnel prepa-
10 ration.

11 “(E) AGENCY FOR EARLY INTERVENTION
12 SERVICES.—At least 1 member shall be from
13 each of the State agencies involved in the provi-
14 sion of, or payment for, early intervention serv-
15 ices to infants and toddlers with disabilities and
16 their families and shall have sufficient authority
17 to engage in policy planning and implementa-
18 tion on behalf of such agencies.

19 “(F) AGENCY FOR PRESCHOOL SERV-
20 ICES.—At least 1 member shall be from the
21 State educational agency responsible for pre-
22 school services to children with disabilities and
23 shall have sufficient authority to engage in pol-
24 icy planning and implementation on behalf of
25 such agency.

1 “(G) STATE MEDICAID AGENCY.—At least
2 1 member shall be from the agency responsible
3 for the State medicaid program.

4 “(H) HEAD START AGENCY.—At least 1
5 representative from a Head Start agency or
6 program in the State.

7 “(I) CHILD CARE AGENCY.—At least 1
8 representative from a State agency responsible
9 for child care.

10 “(J) AGENCY FOR HEALTH INSURANCE.—
11 At least 1 member shall be from the agency re-
12 sponsible for the State regulation of health in-
13 surance.

14 “(2) OTHER MEMBERS.—The council may in-
15 clude other members selected by the Governor, in-
16 cluding a representative from the Bureau of Indian
17 Affairs, or where there is no BIA-operated or BIA-
18 funded school, from the Indian Health Service or the
19 tribe or tribal council.

20 “(c) MEETINGS.—The council shall meet at least
21 quarterly and in such places as the council determines nec-
22 essary. The meetings shall be publicly announced, and, to
23 the extent appropriate, open and accessible to the general
24 public.

1 “(d) MANAGEMENT AUTHORITY.—Subject to the ap-
2 proval of the Governor, the council may prepare and ap-
3 prove a budget using funds under this part to conduct
4 hearings and forums, to reimburse members of the council
5 for reasonable and necessary expenses for attending coun-
6 cil meetings and performing council duties (including child
7 care for parent representatives), to pay compensation to
8 a member of the council if the member is not employed
9 or must forfeit wages from other employment when per-
10 forming official council business, to hire staff, and to ob-
11 tain the services of such professional, technical, and cler-
12 ical personnel as may be necessary to carry out its func-
13 tions under this part.

14 “(e) FUNCTIONS OF COUNCIL.—

15 “(1) DUTIES.—The council shall—

16 “(A) advise and assist the lead agency des-
17 ignated or established under section 635(a)(10)
18 in the performance of the responsibilities set
19 forth in such section, particularly the identifica-
20 tion of the sources of fiscal and other support
21 for services for early intervention programs, as-
22 signment of financial responsibility to the ap-
23 propriate agency, and the promotion of the
24 interagency agreements;

1 “(B) advise and assist the lead agency in
2 the preparation of applications and amend-
3 ments thereto;

4 “(C) advise and assist the State edu-
5 cational agency regarding the transition of tod-
6 dlers with disabilities to preschool and other ap-
7 propriate services; and

8 “(D) prepare and submit an annual report
9 to the Governor and to the Secretary on the
10 status of early intervention programs for in-
11 fants and toddlers with disabilities and their
12 families operated within the State.

13 “(2) AUTHORIZED ACTIVITY.—The council may
14 advise and assist the lead agency and the State edu-
15 cational agency regarding the provision of appro-
16 priate services for children from birth through age
17 5. The council may advise appropriate agencies in
18 the State with respect to the integration of services
19 for infants and toddlers with disabilities and at-risk
20 infants and toddlers and their families, regardless of
21 whether at-risk infants and toddlers are eligible for
22 early intervention services in the State.

23 “(f) CONFLICT OF INTEREST.—No member of the
24 council shall cast a vote on any matter that is likely to
25 provide a direct financial benefit to that member or other-

1 wise give the appearance of a conflict of interest under
2 State law.

3 **“SEC. 642. FEDERAL ADMINISTRATION.**

4 “Sections 616, 617, and 618 shall, to the extent not
5 inconsistent with this part, apply to the program author-
6 ized by this part, except that—

7 “(1) any reference in such sections to a State
8 educational agency shall be considered to be a ref-
9 erence to a State’s lead agency established or des-
10 igned under section 635(a)(10);

11 “(2) any reference in such sections to a local
12 educational agency, educational service agency, or a
13 State agency shall be considered to be a reference to
14 an early intervention service provider under this
15 part; and

16 “(3) any reference to the education of children
17 with disabilities or the education of all children with
18 disabilities shall be considered to be a reference to
19 the provision of appropriate early intervention serv-
20 ices to infants and toddlers with disabilities.

21 **“SEC. 643. ALLOCATION OF FUNDS.**

22 “(a) RESERVATION OF FUNDS FOR OUTLYING
23 AREAS.—

24 “(1) IN GENERAL.—From the sums appro-
25 priated to carry out this part for any fiscal year, the

1 Secretary may reserve not more than 1 percent for
2 payments to Guam, American Samoa, the United
3 States Virgin Islands, and the Commonwealth of the
4 Northern Mariana Islands in accordance with their
5 respective needs.

6 “(2) CONSOLIDATION OF FUNDS.—The provi-
7 sions of Public Law 95–134, permitting the consoli-
8 dation of grants to the outlying areas, shall not
9 apply to funds those areas receive under this part.

10 “(b) PAYMENTS TO INDIANS.—

11 “(1) IN GENERAL.—The Secretary shall, sub-
12 ject to this subsection, make payments to the Sec-
13 retary of the Interior to be distributed to tribes,
14 tribal organizations (as defined under section 4 of
15 the Indian Self-Determination and Education Assist-
16 ance Act), or consortia of the above entities for the
17 coordination of assistance in the provision of early
18 intervention services by the States to infants and
19 toddlers with disabilities and their families on res-
20 ervations served by elementary schools and sec-
21 ondary schools for Indian children operated or fund-
22 ed by the Department of the Interior. The amount
23 of such payment for any fiscal year shall be 1.25
24 percent of the aggregate of the amount available to
25 all States under this part for such fiscal year.

1 “(2) ALLOCATION.—For each fiscal year, the
2 Secretary of the Interior shall distribute the entire
3 payment received under paragraph (1) by providing
4 to each tribe, tribal organization, or consortium an
5 amount based on the number of infants and toddlers
6 residing on the reservation, as determined annually,
7 divided by the total of such children served by all
8 tribes, tribal organizations, or consortia.

9 “(3) INFORMATION.—To receive a payment
10 under this subsection, the tribe, tribal organization,
11 or consortium shall submit such information to the
12 Secretary of the Interior as is needed to determine
13 the amounts to be distributed under paragraph (2).

14 “(4) USE OF FUNDS.—The funds received by a
15 tribe, tribal organization, or consortium shall be
16 used to assist States in child find, screening, and
17 other procedures for the early identification of In-
18 dian children under 3 years of age and for parent
19 training. Such funds may also be used to provide
20 early intervention services in accordance with this
21 part. Such activities may be carried out directly or
22 through contracts or cooperative agreements with
23 the BIA, local educational agencies, and other public
24 or private nonprofit organizations. The tribe, tribal
25 organization, or consortium is encouraged to involve

1 Indian parents in the development and implementa-
2 tion of these activities. The above entities shall, as
3 appropriate, make referrals to local, State, or Fed-
4 eral entities for the provision of services or further
5 diagnosis.

6 “(5) REPORTS.—To be eligible to receive a
7 grant under paragraph (2), a tribe, tribal organiza-
8 tion, or consortium shall make a biennial report to
9 the Secretary of the Interior of activities undertaken
10 under this subsection, including the number of con-
11 tracts and cooperative agreements entered into, the
12 number of children contacted and receiving services
13 for each year, and the estimated number of children
14 needing services during the 2 years following the
15 year in which the report is made. The Secretary of
16 the Interior shall include a summary of this informa-
17 tion on a biennial basis to the Secretary of Edu-
18 cation along with such other information as required
19 under section 611(h)(3)(E). The Secretary of Edu-
20 cation may require any additional information from
21 the Secretary of the Interior.

22 “(6) PROHIBITED USES OF FUNDS.—None of
23 the funds under this subsection may be used by the
24 Secretary of the Interior for administrative pur-

1 poses, including child count, and the provision of
2 technical assistance.

3 “(c) STATE ALLOTMENTS.—

4 “(1) IN GENERAL.—Except as provided in para-
5 graphs (2) and (3) from the funds remaining for
6 each fiscal year after the reservation and payments
7 under subsections (a) and (b), the Secretary shall
8 first allot to each State an amount that bears the
9 same ratio to the amount of such remainder as the
10 number of infants and toddlers in the State bears to
11 the number of infants and toddlers in all States.

12 “(2) MINIMUM ALLOTMENTS.—Except as pro-
13 vided in paragraph (3), no State shall receive an
14 amount under this section for any fiscal year that is
15 less than the greater of—

16 “(A) $\frac{1}{2}$ of 1 percent of the remaining
17 amount described in paragraph (1); or

18 “(B) \$500,000.

19 “(3) RATABLE REDUCTION.—

20 “(A) IN GENERAL.—If the sums made
21 available under this part for any fiscal year are
22 insufficient to pay the full amounts that all
23 States are eligible to receive under this sub-
24 section for such year, the Secretary shall rat-

1 ably reduce the allotments to such States for
2 such year.

3 “(B) ADDITIONAL FUNDS.—If additional
4 funds become available for making payments
5 under this subsection for a fiscal year, allot-
6 ments that were reduced under subparagraph
7 (A) shall be increased on the same basis the al-
8 lotments were reduced.

9 “(4) DEFINITIONS.—For the purpose of this
10 subsection—

11 “(A) the terms ‘infants’ and ‘toddlers’
12 mean children under 3 years of age; and

13 “(B) the term ‘State’ means each of the 50
14 States, the District of Columbia, and the Com-
15 monwealth of Puerto Rico.

16 “(d) REALLOTMENT OF FUNDS.—If a State elects
17 not to receive its allotment under subsection (c), the Sec-
18 retary shall realLOT, among the remaining States, amounts
19 from such State in accordance with such subsection.

20 **“SEC. 644. AUTHORIZATION OF APPROPRIATIONS.**

21 “For the purpose of carrying out this part, there are
22 authorized to be appropriated such sums as may be nec-
23 essary for each of the fiscal years 2004 through 2009.